Editor's note: appealed -- aff'd, Civ. No. 81-74 BLM (D. Mont. May 10, 1984)

ILEAN M. LANDIS

IBLA 81-273 Decided November 9, 1981

Appeal from the decision of Wyoming State Office, Bureau of Land Management, rejecting oil and gas lease offer W 66479.

Affirmed.

1. Oil and Gas Leases: Applications: Drawings -- Oil and Gas Leases: Applications: Sole Party in Interest -- Words and Phrases

   "Interest in an oil and gas lease or offer." Where a party to a pooling agreement is authorized to advance funds for filing of drawing entry cards in simultaneous oil and gas lease drawings, payment of rentals, and office expenses, and is entitled to be reimbursed therefor with interest and receive a consultation fee from the pooled proceeds of any leases issued, all parties to the agreement have an interest in each lease offer within the meaning of 43 CFR 3102.7 (1979), requiring the disclosure of interested parties.

2. Contracts: Construction and Operation: Generally -- Hearings -- Oil and Gas Leases: Applications: Drawings -- Oil and Gas Leases: Applications: Sole Party in Interest -- Rules of Practice: Hearings

   The Board of Land Appeals will not order a fact-finding hearing to determine whether a pool agreement violates regulations requiring disclosure of other parties in interest in a simultaneous oil and gas lease filing where there are no ambiguities in the agreement and it is clear that there are other parties in interest to the lease offer other than appellant.

APPEARANCES: Lynn J. Farnworth, Esq., Moscow, Idaho, for appellant; Harold J. Baer, Jr., Esq., Office of the Solicitor, Denver, Colorado, for Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

Ilean M. Landis has appealed the decision of the Wyoming State Office, Bureau of Land Management (BLM), dated December 30, 1980, rejecting oil and gas lease offer W 66479. Appellant's offer was drawn number two for parcel WY 3305 at the simultaneous drawing held in November 1978. 1/ In its decision, BLM stated that appellant had been requested to furnish a copy of any service contract, contract, pooling agreement, etc., which appellant may have had at the time the offer for parcel WY 3305 was made.

The decision continued:

> With your Certification of Qualifications to Hold a Federal Oil and Gas Lease (Simultaneous), to which you answered "No" to all questions, you submitted a copy of your Pool Agreement for the Filing of BLM Entry Cards. This Pool Agreement is the same type the Board of Land Appeals in Wayne E. DeBord et al, 50 IBLA 216, [87 I.D. 465, appeal pending, Landis v. Andrus, No. 80-2110 (D. Idaho filed Dec. 23, 1980)] September 30, 1980, ruled that,
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> > Where a party to a pooling agreement is authorized to advance funds for filing of drawing entry cards in simultaneous oil and gas lease drawings, payment of rentals, and office expenses, and is entitled to be reimbursed therefor with interest and receive a consultation fee from the pooled proceeds of any leases issued, all parties to the agreement have an interest in each lease offer within the meaning of 43 CFR 3102.7, 2/ requiring the disclosure of interested parties.
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> As you did not disclose there were other interested parties in your offer, nor did you submit the required statements called for in regulation 43 CFR 3102.7 within the time allowed, your offer for parcel WY 3305 is hereby rejected.

1/ The decision stated that the number one drawee was disqualified to receive the lease.
2/ 43 CFR Parts 3100 and 3110 were amended and recodified effective June 16, 1980. 45 FR 35156 (May 23, 1980). References herein are to 43 CFR Parts 3100 and 3110 (1979) which were in effect at the time appellant's offer was filed and the drawing to determine priority was held.

In her statement of reasons, appellant admits that the pool agreement at issue is the same one which was before the Board in Wayne E. DeBord, supra, and urges, in effect, that we reconsider our conclusions as to the nature of the agreement. She contends that there is an ambiguity in the agreement that has been ignored by both BLM and this Board and that as a result appellant requests additional time to submit affidavits demonstrating that the intent of the parties to the agreement was not to give Paul Landis, also a party to the agreement, a contractual right to an interest in the lease proceeds as shown by their subsequent acts and conduct. Appellant also requests a hearing to determine the actual implementation and intention of the parties to the pooling agreement.

Appellant examined several cases in which the Board found various agreements to be in violation of the regulations and other cases in which the Board held agreements to be acceptable. Appellant contends that the pooling agreement in issue is more analogous to those agreements which the Board has accepted because of the following facts: No agency function is involved; no interest is created in any member of the pool; no member receives reimbursement except Paul Landis and only for those loans which have been advanced and only for that information which has been provided; no enforceable right exists in any leases which may be obtained by any member of the pool; and all members have the option of withdrawing at any time and of paying the charges, expenses, or loans incurred from any funds whatsoever.

BLM responded that the pool agreement is not ambiguous; that the agreement is clear and gives an undisclosed interest in Landis' offer to other parties; that the principle of res judicata should be applied here because all legal issues presented here were or could have been presented in Wayne E. DeBord, supra. In her reply brief, appellant asserts that the doctrine of res judicata is not applicable because the issue of ambiguity of the agreement was not decided in Wayne E. DeBord, supra.

[1] Departmental regulation, 43 CFR 3102.7, provides that a separate statement signed by "other interested parties" and the offeror, "setting forth the nature and extent of the interest of each in the offer," and a copy of their written agreement must be filed "not later than 15 days after the filing of the lease offer." Failure to comply will result in rejection of the lease offer or cancellation of any lease issued pursuant to the offer. Vickie J. Landis, 54 IBLA 25 (1981); Mildred A. Moss, 28 IBLA 364 (1977), sustained, Moss v. Andrus, Civ. No. 78-1050 (10th Cir. Sept. 20, 1978).

In Wayne E. DeBord, supra, we fully examined the question of whether, under the pool agreement at issue, there were "other interested parties" to appellant's offer such that appellant should have complied with the disclosure requirements of the regulation and we do not find that appellant's arguments on appeal in this case warrant changing our analysis and conclusions. In that case we stated:

> [Paul H.] Landis has an interest in each of the lease offers made pursuant to the pool agreement. He advances funds for filing entry cards and paying annual lease rentals under the terms of the agreement. He is also entitled to impose an unspecified charge on the pool as a "consultation fee," plus a general charge for office and clerical expenses. He is entitled to be reimbursed with interest from the proceeds of the sale or assignment of any lease issued, for which he may secure payment by "liens or other legal means." This is participation in the issues or profits which may accrue "in any manner" from the lease and is an "interest" within the meaning of 43 CFR 3102.7. 43 CFR 3100.0-5(b).
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> * * * [U]nder the agreement Landis has a contractual right to be reimbursed with interest from the proceeds of the sale of any lease issued, and not a general right of repayment. The cumulative debt owed to Landis by the pool is not required to be apportioned to the specific lease or offer or particular pool member for which it was incurred. The proceeds from any lease of any member can be used by Landis to reduce or discharge the debt owed to him by all the members for services rendered in connection with all the offers and leases involved.
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> Further, the parties to the pool agreement have a joint interest in each other's offers made pursuant to the agreement by virtue of the fact that under the agreement Landis is reimbursed for the expenses incurred in filing their entry cards and paying their rentals from the proceeds of the sale of any lease issued, for which he may secure payment by "liens or other legal means." The proceeds from the sale of any lease issued constitute a central pool in which each party participates. This clearly is participation in the profits which may accrue "in any manner" from the lease and is an "interest" within the meaning of 43 CFR 3102.7. 43 CFR 3100.0-5(b).
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> Appellants' contention that the pool agreement gave no enforceable right against any lease to Landis or any party to the agreement is incorrect. Pool members may withdraw only as to the filing of new entry cards. The definition of "interest" is broad. It includes legally enforceable rights, claims, see H. J. Enevoldsen, 44 IBLA 70, 86 I.D. 643 (1979), and participation in profits. 43 CFR 3100.0-5(b). [Emphasis in original.]

Wayne E. DeBord, supra at 220, 87 I.D. at 468, 469.

In her statement of reasons at 3, 4, appellant identifies an alleged ambiguity between the language in clause 1 and clause 4 of the pool agreement. 3/ These clauses read in pertinent part:

> 1. Any or all members, both present and future, of the POOL, who may have their entry card drawn for annual leases * * * agree jointly and individually, to pay all expenses that have been incurred by and through this Agreement * * * from the proceeds of the sale of any said lease, immediately upon receipt of said proceeds.
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> 4. It is expressly agreed and covenanted by and between the parties that all of said expenses and charges as detailed hereinabove may be paid in full or in part from: receipts from the sale of any leases obtained through the lottery drawing by the Bureau of Land Management of entry cards filed under this Agreement; assignments of any portion or part of any such lease obtained from any such drawing; or by any other approved property or negotiable instrument acceptable to LANDIS. All of the said payments * * * must be subsequent to the issuance of any lease or leases obtained from a winning drawing of entry cards filed under this Agreement and to the sale of said lease to a purchaser insofar that a certain value can be assessed said lease or assignment by both parties.

The Board discussed this ambiguity in Vickie J. Landis, supra at 29, as follows:

> We agree that the above-quoted language, on the one hand, seems to require payments only from the proceeds of the sale of a lease and then, on the other, seems to allow the parties some discretion in the source of the payment, but we find that the discrepancy is not critical to our analysis of the pool agreement. Regardless of the source of a party's payment ultimately, what is important is that Paul Landis' right to payment for expenses arises only after issuance and subsequent sale or assignment of a lease obtained in a BLM drawing and may be enforced by Landis against the proceeds of the lease's sale by "liens or other legal means." We find no need for additional evidence clarifying the parties' intent on this point. [Emphasis in original.]

3/ We note that a copy of the pool agreement was not attached to the statement of reasons, but was included in the case file.

Appellant's attempt to show that the pool agreement is comparable to various agreements which the Board has found in compliance with the regulations is without merit. The fact remains that the pool agreement gives Paul Landis and other members of the pool an interest in the lease offer as defined by 43 CFR 3100.0-5(b). Therefore, appellant was required to comply with 43 CFR 3102.7 and failure to comply properly resulted in rejection of the lease offer.

Appellant requests additional time to submit affidavits to show the intent of the parties to the pool agreement. We find no need for additional evidence clarifying the parties' intent.

[2] Appellant also requests a hearing in the case. The Board will order a fact-finding hearing in order to determine whether or not there has been a violation of the regulation when there are ambiguities in a complex contract between the parties and the meaning of the contract terms can best be understood in light of facts demonstrating its implementation by the contracting parties and the practical applications they and other clients have given to the terms. Valerie Mellor, 49 IBLA 303 (1980); Harry S. Hills, 48 IBLA 356 (1980). We do not find that the pool agreement in this case is ambiguous. Therefore, it is not necessary to resort to extrinsic evidence to understand the meaning of the agreement and appellant's request for a hearing is denied. Since the above discussion is dispositive of this case, it is not necessary to consider the other issues raised by either party.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Gail M. Frazier
Administrative Judge

We concur:

C. Randall Grant, Jr.
Administrative Judge

Douglas E. Henriques
Administrative Judge